



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0819]

RIN 1625-AA00

Safety Zone; Atchafalaya River - Berwick Bay, Morgan City, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone of 100-meters from the western side of the channel in the Atchafalaya River through Berwick Bay between mile marker (MM) 119 and MM 121. This temporary safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the recreational paddling race, Tour Du Teche 135. Entry of vessels into this zone is prohibited unless specifically authorized the Captain of the Port Houma or a designated Patrol Commander.

DATES: This rule is effective from 10 a.m. through 5 p.m. on October 9, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2022-0819 in the search box and click "search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this action, call or email Lieutenant Jenelle Piché, MSU Morgan City, LA, U.S. Coast Guard; telephone (985) 855-0724, email D08-SMB-MSUMorganCity-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Houma
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
MSU	Marine Safety Unit
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. It is impracticable to publish an NPRM because we must establish this safety zone by October 9, 2022 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule is contrary to public interest because it would delay the safety measures necessary to respond to potential hazards associated with the Tour Du Teche 135 paddle race. Immediate action is needed to protect vessels, event participants, and mariners from the safety hazards associated with the race.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034

(previously 33 U.S.C. 1231). The Captain of the Port Houma (COTP) has determined that potential hazards associated with the Tour Du Teche 135 paddle race will be a safety concern to vessels and persons. This rule is needed to protect the public, mariners, event participants, and vessels from the potential hazards associated with the Tour Du Teche 135 paddle race.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone from 10 a.m. through 5 p.m. on October 9, 2022. The temporary safety zone encompasses the Berwick Bay lock and dam (in the proximity of MM 119) and extends 100-meters from the western shore outwards of the Atchafalaya River through Berwick Bay, ending at the Southwest “Red” Reef Lighthouse, near the I-90 Bridge (in the proximity of MM 121). This temporary safety zone will not interfere with navigable waterway. No person or vessel will be permitted to enter or transit within the safety zone, unless specifically authorized by the COTP or a designated Patrol Commander. Public notifications will be made to the local maritime community through Broadcast Notice to Mariners (BNM). Mariners and other members of the public may contact the Waterways Management Division at MSU Morgan City, to inquire about the safety zone by telephone at (985) 855-0724.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analysis based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protectors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been

reviewed by the Office of Management and Budget. This regulatory determination is based on the size, location, and duration, of the safety zone.

This temporary safety zone will not restrict navigation on the Atchafalaya River through Berwick Bay. Moreover, the Coast Guard will issue a Local Notice to Mariners (LNM) about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V. A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1., associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will not prohibit mariners and the public to transit through the navigational channel in the Atchafalaya River through Berwick Bay. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev.01. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165–REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 *continues* to read as follows:

Authority: US U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2

2. Add § 165.T08-0819 to read as follows:

§ 165.T08-0819 Safety Zone; Atchafalaya River - Berwick Bay, Morgan City, LA.

(a) *Location.* The following area is a safety zone: 100-meters from the shore from the opening of Berwick Bay Lock approximately near MM 119 along the western side of the channel in the Atchafalaya River through Berwick Bay to MM 121. This safety zone does not include the navigational channel.

(b) *Definitions.* As used in this section, *Patrol Commander* means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port Houma (COTP) in the enforcement of the regulations in this section.

(c) *Enforcement period.* This section will be enforced from 10 a.m. until 5 p.m. on October 9, 2022.

(d) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or a Patrol Commander.

(2) Entry into this zone is prohibited unless authorized by the COTP or a Patrol Commander

(3) Persons or vessels seeking to enter into or transit through the zone must request permission from the COTP or a Patrol Commander. They may be contacted on VHF-FM channels 15 and 16 or by telephone at (985) 855-0724.

(4) If permission is granted, all persons and vessels must comply with the instructions of the COTP or a Patrol Commander.

(e) *Informational broadcasts.* The COTP or a Patrol Commander will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as appropriate.

Dated: October 3, 2022.

L. T. O'Brien,
Captain, U. S. Coast Guard,
Captain of the Port Houma.

[FR Doc. 2022-22093 Filed: 10/7/2022 2:00 pm; Publication Date: 10/12/2022]